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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of the)
Pay Telephone Reclassification)
and Compensation Provisions of the)
Telecommunications Act of 1996)

CC Docket No. 96-128

DOCKET FILE COPY ORIGINAL

TO: The Common Carrier Bureau

MOTION OF GTE FOR ACCEPTANCE OF LATE FILING

GTE Service Corporation, on behalf of its affiliated domestic telephone and video companies ("GTE") hereby submits this motion, pursuant to sections 1.41 and 1.4 of the Commission's rules, asking for the acceptance for filing of GTE's Comments in the captioned docket, as follows:

1. GTE's employee attempted to file GTE's Comments in the captioned docket shortly before the 5:30 P.M. deadline on July 1, but was refused admission into the offices of the Commission.
2. GTE was unable to file its Comments earlier in the day because of difficulties with the electronic transmission of the document from Irving, Texas to the Washington, D.C. office.
3. Grant of this motion would be beneficial in providing another viewpoint to the Commission together with the facts and background explained in GTE's Comments, all of which should be of value to the Commission in reaching a decision in this important proceeding.

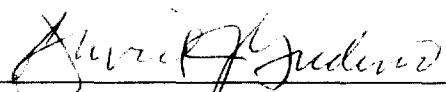
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4. No party will be harmed by grant of this motion inasmuch as the proceeding is a rulemaking open to any and all parties to make submissions, and GTE neither seeks nor will it gain any advantage vis-a-vis other parties.

Respectfully submitted,

GTE Service Corporation and its
affiliated domestic telephone and video
companies

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July 2, 1996

Their Attorneys

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GTE's COMMENTS

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SUMMARY

1. The Commission should allow the payphone marketplace to work efficiently while minimizing the need for regulatory intervention.

2. In implementing 47 U.S.C. Section 276, the FCC should rely on existing administrative practices and payphone market characteristics. Specifically: (i) within broad FCC guidelines, compensation should be extended to all completed calls for which payphone providers are not compensated; (ii) responsibility for compensation should rest with facilities-based carriers; (iii) the FCC should adopt a "carrier pays" compensation system that builds on existing administrative procedures and arrangements; and (iv) the FCC should rely on market-based approaches to determining proper payphone compensation, and should not adopt an interim plan

3. GTE suggests that existing FCC rules and policies will accommodate the required reclassification of payphone assets. Specifically: (i) exchange carriers should only be required to tariff payphone lines and central office coin lines at the state level; (ii) transfer of payphone assets at net book value is in harmony with existing FCC rules and policies; (iii) reclassification of payphone investments should be treated as an exogenous cost adjustment to the common line PCI and by appropriate revisions to subscriber line charges.

4. A competitively neutral plan should be designed to ensure appropriately placed public interest payphones furnished by any provider; and the FCC should make it clear that no state will be allowed to mandate that a provider furnish public interest payphones unless it has established a mechanism that enables the provider to fully recover its costs.

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GTE's COMMENTS

GTE Service Corporation (GTE), on behalf of its affiliated domestic telephone and video companies, hereby submit these Comments in response to the Notice of Proposed Rulemaking, FCC 96-254, (released June 6, 1996) (the "Notice") in the above-captioned proceeding considering application of the Telecommunications Act of 1996 (the "1996 Act"), specifically 47 U.S.C. Section 276¹, as follows.

I. THE COMMISSION SHOULD ALLOW THE PAYPHONE MARKETPLACE TO WORK EFFICIENTLY WHILE MINIMIZING THE NEED FOR REGULATORY INTERVENTION.

Section 276 directs the Commission to promulgate rules to ensure that all payphone owners are compensated for calls originated on their payphones and to discontinue existing subsidies for payphones owned by incumbent local exchange carriers ("LECs" or "exchange carriers"). Accordingly, the *Notice* proposes to establish a compensation mechanism for each and every completed intrastate and interstate call using a payphone, the termination of subsidies for LEC payphones by reclassifying

¹ All references to statutory sections are to 47 U.S.C. unless otherwise identified.

such equipment as Customer Premises Equipment ("CPE"), the discontinuance of access charge payphone service elements: creation of rules permitting payphone providers to negotiate with the location provider about a payphone's presubscribed intraLATA carrier; and the establishment of a class of public interest payphones to be located "where there would otherwise not be a payphone."²

In general, the *Notice* proposes to establish compensation mechanisms that closely resemble those in effect for many private payphone owners today. Further, the *Notice* proposes to rely on existing rules governing the accounting treatment of regulated and nonregulated assets as well as the price cap exogenous cost rules to reclassify payphone investment as CPE, and make appropriate adjustments to access charges.

GTE generally supports the proposals set forth in the *Notice*. However, GTE cautions the Commission to avoid the establishment of overly restrictive federal policies that would have the effect of continuing under regulation a significant portion of the nation's telecommunications industry that will now be operating in a fully competitive environment. Wherever possible, the Commission should allow the payphone marketplace to work efficiently while minimizing the need for Commission intervention.

² *Notice* at ¶1.

II. IN DEVELOPING THE RULES TO IMPLEMENT SECTION 276, THE COMMISSION SHOULD RELY ON EXISTING ADMINISTRATIVE PRACTICES AND PAYPHONE MARKET CHARACTERISTICS.

- A. Within broad guidelines established by the FCC, compensation should be extended to all completed calls for which payphone providers are not compensated.**

GTE agrees with the tentative conclusions set forth in the Notice (at ¶16) that compensation should extend to calls for which payphone providers are not compensated by the presubscribed Interexchange Carrier ("IXC").³ Fair compensation should extend to all access code calls (including 1+800 access calls), subscriber 800 and other toll-free number calls and debit card calls. Per-call compensation should also apply to all interstate, intrastate and international calls..

As the Commission observes, some payphone providers are compensated via contractual arrangements with IXCs for 0+ calls originated from payphones. However, the Commission should clarify that payphone owners are entitled to per-call compensation for 0+ calls if agreements with the presubscribed IXC are not in place upon the effective date of the rules adopted in this proceeding.

The Commission should affirm that compensation would apply only to those calls actually completed by the carrier (*i.e.*, completed to the called party). Indeed, this is

³ Under the existing regulatory environment, the IXC carrying the call does not compensate GTE for calls originated from its payphones; rather, GTE recovers its costs through the imposition of access charges. Once the requirements of Section 276 are implemented and cost recovery is removed from access charges, LECs will negotiate service, presubscription, and compensation arrangements with both the location provider and the IXC.

what is mandated by Section 276.⁴ Carriers must be able to properly identify those payphone calls eligible for compensation. This could prove to be difficult, or impossible, if compensation were to extend to calls originated from a payphone but not completed through the carrier's network.

GTE disagrees with the suggestion that one of the Commission's roles in this proceeding should be to set a standard nationwide local coin rate for all calls originated by payphones. *Notice* at ¶21. While Congress clearly intended for the Commission to ensure that adequate compensation will be extended to all calls originated from payphones, it did not mandate a national rate prescription; nor does the 1996 Act contemplate the wholesale preemption of state authority in this regard. In fact, the prescription of a national local coin rate would serve to defeat the purpose of the 1996 Act to remove any subsidies associated with payphone rates.

What the Commission can do is to issue broad guidelines that would ensure that payphone service providers are adequately compensated for local calls. These guidelines, however, must allow local payphone prices to vary based on the costs incurred by the provider and the characteristics of individual markets. Payphone providers, including LECs, furnish payphone services and equipment as a business operation, placing phones generally at those locations where they are likely to prove commercially viable and profitable. The private payphone business has become

⁴ "[T]he Commission shall ... prescribe regulations that (A) establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every *completed* intrastate and interstate call using their payphone...." Section 276(b)(1), *emphasis added*.

increasingly successful in the past few years; as LEC payphone operations are deregulated, there will be intense competition in the placement and operation of payphones. Thus, the Commission can be assured that competition in payphone markets, particularly in more dense and urban population areas, will have a significant impact on setting local calling rates from such phones.

Currently, variations exist in local coin rates within certain states. Full deregulation, coupled with competition in local payphone markets, may result in some variation in rates between individual phone locations. However, competition within those markets should work to stabilize and minimize such variations over time.

IntraLATA 0+ calls should not be treated any differently than interLATA calls for compensation purposes. Payphone providers can and should obtain compensation for 0+ intraLATA calls from carriers carrying such calls just as they will do for calls placed on an interLATA basis.⁵

The *Notice* asks for comment on the potential for fraud by the use of autodialers (or other means) to place repeated calls and unfairly inflate the payphone owner's claimed compensation. Exchange carriers and IXC's should be given clear authority to take all steps necessary to prevent fraud. Once it has been determined that fraud is occurring over a payphone line (e.g., through detection of an autodialer connected to the line, or detection of unusual usage patterns) a LEC or IXC should have broad

⁵ The Commission should affirm that a LEC must be permitted to charge other payphone providers for calls made to the LEC's 411 Directory Assistance service. The Commission should preempt any existing state regulation which prevents the LECs from charging for these calls.

latitude to immediately deny compensation to that payphone provider, deny additional requests for service, and/or disconnect the service to that payphone facility.

B. The responsibility to administer and pay compensation for payphone calls should be placed on facilities-based carriers only.

Under existing rules, only a certain number of larger IXC's are required to pay compensation to private payphone owners ("PPOs"). The *Notice* (at ¶31) indicates that compensation should now be paid by all IXC's that carry access code and toll-free calls. Further, those IXC's that are required to track these calls and pay compensation will be obliged to initiate an annual independent audit of the per-call tracking functions and make such information available for Commission inspection.

The Commission should clarify that the responsibility to track completed payphone calls, remit compensation, and make available audited information on its compensation mechanisms should be placed on facilities-based carriers only, *i.e.*, those that maintain switching platforms that physically route the call originating from the payphone locations. IXC's that are pure resellers, *i.e.*, those that do not operate switches or signaling platforms, have no direct means of identifying calls originating from payphone access lines, and are certainly in no position to track such calls for purposes of determining what compensation should be remitted to which payphone owner.

The IXC's obligated to pay compensation on such calls should be limited to those IXC's that own and operate the switch and associated signaling platforms that enable

payphone calls to be routed to their destinations.⁶ This means only facilities-based carriers, and not pure resellers, should be obligated to pay compensation directly to payphone providers.⁷

C. The Commission should adopt a "carrier pays" compensation system that builds on existing administrative procedures and arrangements.

The *Notice* (at ¶32) proposes to require the industry to adopt a "direct billing arrangement" whereby IXCs (and the LEC's interexchange operations) would send a statement to each PPO indicating those calls eligible for compensation and the appropriate remittance to the payphone owner. GTE supports the Commission's tentative conclusion that a "carrier pays" compensation system that builds on existing procedures and arrangements should be adopted.

Exchange carriers are required to provide information regarding private

⁶ There is no justification for implementing an annual audit or reporting requirement. Carriers should be subject to audit only if a complaint is filed against that carrier alleging improper or erroneous tracking and compensation practices, and such complaint establishes a prima facie case.

⁷ This does not mean that resellers, or other service providers, such as prepaid calling card operations, will be unaffected by the compensation rules and procedures established in this proceeding. Facilities-based carriers will pass on such costs to those entities that resell IXC's services to provide their own long distance offerings to the public. These companies will also incur additional costs associated with the administration and verification of the compensation plan. In order to minimize the cost burden on resellers and other entities, the Commission should require all facilities-based carriers that provide their long distance services for resale to implement adequate audit and verification procedures and mechanisms such that resellers can ascertain that they are assessed only those costs associated with *completed* calls originating from paystations over their particular long distance service offerings.

payphones today. Currently, GTE extracts information on each private payphone line, including ANI and billing address information, on a quarterly basis. This information is sent to a number of requesting parties, including a central national clearing house for payphone information.

The existing process can be expanded to accommodate the provision of LEC payphone information as well. However, the only feasible way to administer the "carrier pays" approach would be to rely on the continued use of a clearinghouse operation as is done today. A national clearinghouse would receive, and maintain, from all exchange carriers a nationwide payphone ANI list, coordinate the billing of IXC's for compensation owed, and process payment to various payphone providers. To permit exchange carriers to meet their obligations under Section 276 of the Act, it is essential that they be allowed to rely on such cost-effective measures as the use of central clearinghouses for the processing and distribution of payphone line and call data.

Adequate procedures also exist to process disputes regarding ANIs. When a payphone owner claims it was not properly compensated for calls originating from its payphones, GTE researches its billing records as well as the information furnished to the clearinghouse to determine if an error occurred and whether compensation is due; and this investigation is done in a timely manner. Experience shows that the mandatory procedures set forth in the *Notice* (at ¶134) are not needed. Adopting the suggestion that intraLATA carriers be required to provide positive notification of all payphone installations and disconnects to IXC's would require significant expansion of existing systems and procedures at substantial and unnecessary cost. In addition, requiring that an IXC be obligated to pay compensation even if the LEC fails, perhaps

inadvertently, to furnish positive or negative verification of a claimed ANI would be unreasonable and would expose IXC's to unwarranted liability.

Exchange carriers and IXC's have instituted various administrative procedures and processes to handle a wide range of billing claims and disputes. To ensure efficient and equitable administration of the proposed payphone compensation mechanisms, the Commission should rely on these existing carrier arrangements as well as industry organizations and forums. And, of course, any payphone operator that believes it is not being properly compensated for calls originating from its phones may file a complaint with the Commission.

D. The Commission should rely on market-based approaches to determining proper payphone compensation amounts; and should not adopt an interim plan.

In the spirit of the 1996 Act, the Commission should rely on market-based approaches to determining proper payphone compensation amounts. For example, compensation could be tied to the value of the revenue generated by the call or to market-based local coin rates.

Development of a compensation amount based on industry-wide cost data or cost surrogates, as the *Notice* (at ¶38) suggests, would be unnecessarily burdensome and would be most likely to result in arbitrary compensations levels. Further, use of nationwide data, resulting in a single compensation rate, would ensure that the compensation amount for some payphones -- particularly those in low volume areas -- would never recover the associated costs.

Similarly, linking the per-call compensation amount to existing state-established rates for local coin calls is entirely inappropriate. Most state rates for local coin calls

were set by public utility commissions in the late 1970s or early 1980s; they are doubtful indicators of current cost levels, especially in view of great reluctance on the part of state regulators to permit any increases whatever in local coin rates. By linking the local coin rate with the per-call compensation level, payphone providers would be precluded from recovering the full cost of their payphone operations over time.

The Commission should not establish an interim per-call compensation arrangement for non-LEC phones as suggested in the *Notice* (at ¶40). The FCC is already bound by the requirements of the 1996 Act to establish payphone reclassification and compensation rules within a certain timeframe. Until final rules are adopted, existing mechanisms will adequately compensate payphone providers for their costs. Adding yet another compensation scheme to existing procedures, when the new compensation arrangement mandated by Congress will soon become effective, would only hinder the development of a fair and workable compensation scheme and would unfairly advantage a particular set of competitors.

Furthermore, there are far too many administrative and operational issues left unresolved by the Commission's proposed plan. The industry's and the Commission's resources would be best employed by focusing on the statutory requirements rather than getting involved in establishing and administering an additional and unnecessary interim plan.

III. EXISTING COMMISSION RULES AND POLICIES WILL ACCOMMODATE THE RECLASSIFICATION OF PAYPHONE ASSETS.

A. Exchange carriers should only be required to tariff payphone lines and central office coin lines in their state tariffs.

The *Notice* (at ¶42) concludes that incumbent LEC payphones should be treated as unregulated, detariffed CPE, and that LECs should be required to provide to other payphone providers, on a nondiscriminatory basis all functionalities used in a LEC's delivery of payphone services.

Exchange carriers should be allowed to tariff a coin-line service in their state tariffs, *i.e.*, a service that provides access line and central office coin functionalities equivalent to what the LEC uses in its own operations. In fact, GTE has such arrangements tarified in Florida and California. The Commission should rely on state commissions to determine the reasonableness of the terms and conditions contained in such tariffs.

The *Notice* (at ¶46) requests comment on whether such services should be established pursuant to the Commission's rules governing new services under price cap regulation. GTE believes payphone coin-line services are local in nature and should only be required to be tarified at the state level ⁸

Further, LECs should only be required to tariff basic local coin-line services and

⁸ GTE agrees with the Commission's tentative conclusion that the demarcation point for payphone access lines, including those of the LEC, should be the same as LECs use for private payphone locations today.

functions. Exchange carriers may then choose to furnish other ancillary services on a contractual basis.

B. The transfer of payphone assets at their net book value is consistent with existing Commission rules and policies.

GTE agrees with the Commission's conclusion that only paystation terminal equipment should be classified under existing FCC Rules as CPE, and that the local loop and associated central office functions should remain under regulation. *Notice at ¶49.* GTE also agrees that transfer of payphone assets should generally be defined in terms of existing policies and rules related to the deregulation of CPE.⁹

The transfer of these assets should be accomplished at their net book value. The assessment of an interest charge, as suggested in the *Notice (id.)*, to the payphone assets transferred to nonregulated accounts is not appropriate in this case. The application of the interest component in other asset transfers resulted from the use of an inadequate forecast of nonregulated investment. In the instant case, the reclassification of payphone assets is made at a single point in time and is not governed by any forecast. In addition, because the transfer is mandated the overall impact of the transfer should be neutral between customers of regulated services and those expected to use the nonregulated offering

⁹ GTE urges the FCC to make sure that, as of the effective date of any prescriptions, the appropriate accounting procedures have been identified.

C. The reclassification of payphone investments should be reflected as an exogenous cost adjustment to the common line PCI and in appropriate revisions to subscriber line charges.

Once LEC payphone investment is reclassified as nonregulated CPE, the *Notice* (at paragraph 51) concludes that exchange carriers must reduce their interstate CCL charges by an amount equal to the interstate allocation of payphone costs. Under the Commission's price cap rules, this is accomplished as an exogenous cost adjustment to the common line Price Cap Index ("PCI"). To the extent that common line rates are priced equal to, or near, the maximum terminating Carrier Common Line ("CCL") rate, this exogenous cost adjustment may require reduction in price levels. However, exchange carriers should only be required to adjust actual rate levels due to payphone reclassification if the revision to the PCI forces a change in the rate.

The *Notice* (at ¶51) also suggests that a transition period may be required to move from subsidized compensation to a new compensation scheme. For interstate purposes, a transition period is not necessary. Exogenous cost treatment for non-loop payphone costs and inclusion of LEC coin loops in the Subscriber Line Charge ("SLC") calculation should be accomplished simultaneously, and in a single filing.

The *Notice* (at paragraph 52) asks LECs to identify in their comments state-specific information regarding intrastate rate elements that recover payphone costs; and asks whether intrastate rates should be adjusted to reflect the removal of payphone investments. In contrast with the Commission's existing access charge framework for interstate services, the identification of discreet payphone costs within many state access rates may be problematic and complex. Access rates were established during the 1980s across individual states in a variety of ways. Even to the extent there was a

direct identification of payphone costs at the time those rate elements were established, with specific access charges set accordingly, such information may be woefully outdated. To the extent the state used another method to establish intrastate access charges, e.g., mirroring of interstate rates, there may have never been a direct linkage between intrastate payphone costs and intrastate access charges. In addition, local pay telephone rates always raise certain "social policy" issues within local rate case proceedings — often leading to setting local pay-telephone-related rates below costs. Further, because of the "residual rate making" process typically employed in state jurisdictions, there is usually no direct mapping of subsidies associated with payphone operations.

Under these circumstances, the Commission should allow the states to determine the most appropriate way to implement this provision of the 1996 Act as it pertains to the impact on state telephone service rates. Any federal requirement to adjust intrastate rates should be afforded an appropriate transition period.

The *Notice* (at ¶53) proposes to require the application of the SLC to all payphone lines, including those of exchange carriers, and asks comment on what impact the new rules will have on SLC rate levels. GTE agrees that in order to promote fair competition, the SLC should apply equally to LEC payphone access lines. The inclusion in the SLC calculation of additional demand, representing payphone loops, could result in a decrease in the SLC in some study areas.

The *Notice* (at ¶54) also proposes to require exchange carriers to impute to their own payphone operations, as well as to PPOs, an additional monthly charge representing the difference between the SLC cap (i.e., the \$6 multiline business rate)

and the full interstate costs of these subscriber lines, to the extent the full cost exceeds the cap.

GTE suggests the assessment of additional charges are unjustified. The SLC calculation represents the average loop cost of all services in the study area, not just payphone lines. It is unfair to single out payphone providers and require them to pay charges that recover the full costs of their lines while, at the same time, allowing all other customers to pay subsidized rates. Instead of making exceptions to the SLC application, the Commission should move swiftly to reach a final decision regarding existing access charge subsidies in its Universal Service proceeding, CC Docket No. 96-45, and in its anticipated access reform proceeding.

IV. A COMPETITIVELY NEUTRAL PLAN SHOULD PERMIT ANY PROVIDER TO FURNISH PUBLIC INTEREST PAYPHONES; AND PROVIDERS SHOULD NOT BE REQUIRED TO PROVIDE SUCH PAYPHONES UNLESS STATES HAVE ESTABLISHED A MECHANISM THAT ENABLES THE PROVIDER TO FULLY RECOVER ITS COSTS.

Many exchange carriers are required, pursuant to state commission order, to install and maintain public payphones in locations where there would not otherwise be a payphone. These "public interest" phones typically operate at a financial loss on a standalone basis. The shortfall on costs of public interest payphones are essentially recovered -- if they are recovered -- through revenues generated from other payphones, rates assessed against other ratepayers, or other subsidy mechanisms

Once LEC payphones are reclassified as nonregulated and the associated costs are removed from state and interstate revenue requirements, cost recovery of public interest payphones will not be assured unless an alternative cost recovery measure is put in place.

GTE believes that the continued placement of payphones in at least some locations where otherwise there would be no phone continues to be in the public interest. The views of the individual state commissions -- which have a closer view of the public's needs -- have an important bearing on the extent to which, and at what locations, such phones should be placed. The FCC should provide guidance by setting out the general definition for public interest payphones suggested in the *Notice* (at ¶80). To the extent an obligation to place telephones at locations required by the public interest is imposed on a carrier, there should be a funding mechanism designed to avoid effective confiscation.

There is no reason whatever to limit the obligation to maintain public interest phones to exchange carriers. Any and all payphone providers in the state can serve a public interest purpose by furnishing telephones at a location where it would otherwise be unprofitable. A competitively neutral plan that provides appropriate incentives will best serve the public interest.

Under such a plan, state or local governments would reimburse payphone owners for the costs of installing and maintaining public interest payphones. Such costs would include the direct cost and expenses associated with the payphone's operation as well as a reasonable rate of return.

Alternatively, a state could establish a fund to support public interest phones or, better still, include provision for such phones in their state universal service programs.¹⁰

¹⁰ GTE is opposed to the funding of public interest payphones through a separate federal program, such as that established for Telecommunications Relay Services ("TRS"). Creation of yet another nationwide industry fund to subsidize these

Funding through a state universal service fund would be in harmony with the objective of promoting the availability of, and access to, basic telephone services throughout the country. The state's plan, as in the case of the federal plan, should require each payphone provider to contribute to the fund.

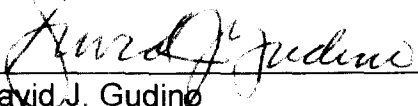
Regardless of the funding arrangement selected, the Commission should make it clear that no state will be permitted to mandate that any carrier provide public interest payphones unless it has established a mechanism that enables the carrier to fully recover its costs.

Respectfully submitted,

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payphones, as suggested in the *Notice*, would be unnecessarily duplicative and administratively burdensome. In addition, funding through the federal universal service fund could result in significant subsidy imbalances among states due to the wide disparity in the number and extent of public interest payphone obligations and varying policies of state commissions on the required availability of public interest phones.